

INTERNATIONAL PRELIMINARY EXAMINATION REPORT
(PCT Article 36 and Rule 70)

Applicant's or agent's file reference F17542 MAC	FOR FURTHER ACTION See Notification of Transmittal of International Preliminary Examination Report (Form PCT/PEA416)	
International application No. PCT/IB 03/04489	International filing date (day/month/year) 10.10.2003	Priority date (day/month/year) 17.10.2002
International Patent Classification (IPC) or both national classification and IPC A61B17/04		
Applicant RÖSCH, Theodor Gerhard		

1. This international preliminary examination report has been prepared by this International Preliminary Examining Authority and is transmitted to the applicant according to Article 36.

2. This REPORT consists of a total of 6 sheets, including this cover sheet.
 - This report is also accompanied by ANNEXES, i.e. sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications made before this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions under the PCT).

These annexes consist of a total of 4 sheets.

3. This report contains indications relating to the following items:
 - I Basis of the opinion
 - II Priority
 - III Non-establishment of opinion with regard to novelty, inventive step and Industrial applicability
 - IV Lack of unity of invention
 - V Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, Inventive step or industrial applicability; citations and explanations supporting such statement
 - VI Certain documents cited
 - VII Certain defects in the international application
 - VIII Certain observations on the international application

Date of submission of the demand 22.04.2004	Date of completion of this report 12.04.2005
Name and mailing address of the International preliminary examining authority:  European Patent Office D-80298 Munich Tel. +49 89 2399 - 0 Tx: 523656 epmu d Fax: +49 89 2399 - 4465	Authorized Officer Schießl, W Telephone No. +49 89 2399-7436

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EXAMINATION REPORT**

International application No. PCT/IB 03/04489

I. Basis of the report

1. With regard to the **elements** of the international application (*Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report since they do not contain amendments (Rules 70.16 and 70.17)*):

Description, Pages

1-15 as originally filed

Claims, Numbers

1-17 as amended (together with any statement) under Art. 19 PCT

Drawings, Sheets

1/5-5/5 as originally filed

2. With regard to the **language**, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.

These elements were available or furnished to this Authority in the following language: , which is:

- the language of a translation furnished for the purposes of the international search (under Rule 23.1(b)).
- the language of publication of the international application (under Rule 48.3(b)).
- the language of a translation furnished for the purposes of international preliminary examination (under Rule 55.2 and/or 55.3).

3. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application, the international preliminary examination was carried out on the basis of the sequence listing:

- contained in the international application in written form.
- filed together with the international application in computer readable form.
- furnished subsequently to this Authority in written form.
- furnished subsequently to this Authority in computer readable form.
- The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.
- The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

4. The amendments have resulted in the cancellation of:

- the description, pages:
- the claims, Nos.:
- the drawings, sheets:

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5. This report has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed (Rule 70.2(c)).

(Any replacement sheet containing such amendments must be referred to under item 1 and annexed to this report.)

see separate sheet

6. Additional observations, if necessary:

III. Non-establishment of opinion with regard to novelty, inventive step and industrial applicability

- 1: The questions whether the claimed invention appears to be novel, to involve an inventive step (to be non-obvious), or to be industrially applicable have not been examined in respect of:

the entire international application,

claims Nos. 1-3

because:

the said international application, or the said claims Nos. 1-3 relate to the following subject matter which does not require an international preliminary examination (specify):

see separate sheet

the description, claims or drawings (*indicate particular elements below*) or said claims Nos. are so unclear that no meaningful opinion could be formed (specify):

the claims, or said claims Nos. are so inadequately supported by the description that no meaningful opinion could be formed.

no international search report has been established for the said claims Nos.

2. A meaningful international preliminary examination cannot be carried out due to the failure of the nucleotide and/or amino acid sequence listing to comply with the standard provided for in Annex C of the Administrative Instructions:

the written form has not been furnished or does not comply with the Standard.

the computer readable form has not been furnished or does not comply with the Standard.

V. Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Yes: Claims	5
	No: Claims	

Inventive step (IS)	Yes: Claims	5
	No: Claims	

Industrial applicability (IA)	Yes: Claims	5
	No: Claims	

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2. Citations and explanations

see separate sheet

**INTERNATIONAL PRELIMINARY
EXAMINATION REPORT - SEPARATE SHEET**

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Section I

The amendments filed under Article 19 PCT introduce subject-matter which extends beyond the content of the application as filed, contrary to Article 34(2)(b) PCT:

- No basis is apparent for the subject-matter of new claim 4.
- Claim 6 defines in combination a body reservoir and a suture element inlet opening into the fluid flow path at an intermediate position which is not originally disclosed.
- Present claim 10 includes a releasable securing means which is originally disclosed only in combination with a suture element feed path intersecting the fluid flow path at a position intermediate the fluid inlet and the outlet (see original claims 13 and 15-17).

This report has been established as if these amendments had not been made (Rule 70.2(c) PCT). Accordingly, the following sections relate to the subject-matter of **present claims 1-3 and 5 only**.

Section III

Claims 1-3 relate to subject-matter mentioned in Rule 67.1(iv) PCT, in particular to a method of therapeutical and surgical treatment of the human or animal body since, according to the description (see e.g. p. 8, para. 1; p. 12, para. 2), the claimed method of feeding a suture element is clearly performed during endoscopic surgery with the claimed device being surgically inserted in the body to be treated. Under terms of Article 34(4)(a)(i) PCT an International Preliminary Examining Authority is not required to carry out an examination of such claims.

Section V

1 Reference is made to the following document (D) cited in the International Search Report:

D1: US-A-5 569 270A

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2 Article 33 PCT

Document D1 (col. 3, l. 50 to col. 4, l. 52; figs. 3, 4) discloses all features of claim 5 except for the suture element inlet opening into the fluid flow path at a position intermediate the fluid inlet and the outlet. The subject-matter of claim 5 is therefore novel (Article 33(2) PCT).

The problem to be solved by the claimed invention is regarded as to enhance the fluid driven suture displacement.

An intermediate suture element inlet, as proposed in claim 5, is neither known from, nor rendered obvious by, the available prior art. Consequently, the subject-matter of claim 5 meets the requirements of Article 33 PCT.

Remarks

- 1 Independent apparatus claims should have been drafted in the two-part form in accordance with Rule 6.3(b) PCT.
- 2 The features of the claims are not provided with reference signs placed in parentheses (Rule 6.2(b) PCT).
- 3 Contrary to the requirements of Rule 5.1(a)(ii) PCT, the relevant background art disclosed in D1 is not mentioned in the description, nor is this document identified therein.